

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
E-mail: lhammond@omlaw.com
E-mail: achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86301
(928) 778-5208
E-mail: John.Sears@azbar.org

Attorneys for Defendant

CLERK OF THE COURT
JANET L. BROWN

2009 DEC 22 PM 2: 20 ✓

CLERK OF THE COURT

FILE: S Smisko

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. P1300CR20081339

Div. 6

DEFENDANT'S MOTION FOR
REEXAMINATION OF
CONDITIONS OF RELEASE

(Oral Argument and Evidentiary
Hearing Requested)

Defendant Steven C. DeMocker, by and through counsel, hereby requests that this court reexamine his conditions of release, pursuant to Ariz. R. Crim. Pro. 7.4(b) and A.R.S. § 13-3967(G). Mr. DeMocker also requests that the Court provide notice to any person having declared victim status in the case in advance of any order amending conditions pursuant to A.R.S. §§ 13-3967(G) and 13-4406.

BACKGROUND

On August 26, 2009, Defendant asked this Court to again consider a modification of his conditions of release. After briefing and an evidentiary hearing, this Court again

1 declined to make any changes to the current conditions that would allow Mr. DeMocker
2 to be released from jail pending trial.

3 On application, Mr. DeMocker is entitled at any time to have the conditions of
4 release reviewed by the judicial officer that imposed them and the Court may amend the
5 order to employ different or additional conditions of release, including a reduction in
6 bail. A.R.S. § 13-3967(G). Mr. DeMocker also requests that the Court notify any
7 person who has declared victim status as is required under A.R.S. §§ 13-3967(G) and
8 13-4406. Material facts not previously presented to the Court in connection with this
9 renewed motion relate to the failure of the State and YCSO to make any of the
10 accommodations to Mr. DeMocker's conditions of confinement promised by the State
11 in their response to his last release motion. As a result, Mr. DeMocker has been denied
12 access to his own case materials, to his defense team including investigators, experts
13 and consultants and has therefore been denied his Sixth Amendment right to the
14 effective assistance of counsel and to assist in his own defense. Accordingly, Mr.
15 DeMocker hereby renews his request that this Court reduce his bond amount and
16 consider setting additional conditions of release to include electronic monitoring to be
17 paid by Mr. DeMocker.

18 ARGUMENT

19 I. The Purpose of Bail is to Secure Mr. DeMocker's Appearance.

20 Pursuant to A.R.S. § 13-3961(B), the purposes of bail and conditions of release
21 are to assure the appearance of the accused, protect against the intimidation of
22 witnesses, and protect the safety of the victim, any other person, or the community. *See*
23 A.R.S. § 13-3961(B) 1-3. In this case, there are no issues with respect to the
24 intimidation of witnesses or protection of anyone or the community. Therefore, the
25 proper purpose of bail and conditions of release are to assure the appearance of Mr.
26 DeMocker. As the Arizona Supreme Court has held:

1
2 Bail is exacted for the sole purpose of securing the attendance of the
3 defendant in court at all times when his presence may be lawfully
4 required, and his surrendering himself in execution of any legal judgment
5 that may be pronounced against him, and any bail fixed at more than is
6 necessary to secure that appearance is excessive within the meaning of the
7 constitution.

8 *Gusick v. Boies*, 71 Ariz. 233, 236, 233 P.2d 446, 448 (1951) (internal
9 citations omitted). Excessive bail is likewise “not to be required for the purpose
10 of preventing the prisoner from being admitted to bail.” *Id.* (citations omitted).

11 **II. This Court Should Lower the Bond Amount.**

12 A.R.S. § 13-3967 (B)¹ outlines the appropriate considerations for the Court to
13 use in determining the method of release or the amount of bond. These considerations
14 include the following: the views of the victim; the nature and circumstances of the
15 offense; the weight of the evidence against the accused; the accused’s family ties,
16 employment, financial resources, character and mental condition; the results of any drug
17 test; whether the accused is using any illegal substances; whether the accused violated
18 certain drug offense; the length of residence in the community; the accused’s record of
19 arrests and convictions; and the accused’s record of appearance at court proceedings or
20 of flight to avoid prosecution or failure to appear.

21 **III. The Court May Order Electronic Monitoring as a Condition of 22 Release to Assure Mr. DeMocker’s Future Appearance.**

23 Pursuant to A.R.S. § 13-3967(D), the Court may, after giving notice to the
24 victim, impose any other conditions deemed reasonably necessary to assure appearance
25 as required” A.R.S. § 13-3967(D). Mr. DeMocker and his family agree to pay all
26 the costs of GPS monitoring set by the Court. This will also save the County the costs of

27 ¹ Because a *Simpson* determination has been made that Mr. DeMocker is entitled to bail, A.R.S. § 13-3967
28 applies.

JOHN M. SEARS
ATTORNEY AT LAW
CERTIFIED CRIMINAL LAW SPECIALIST

P.O. BOX 4080
PRESCOTT, AZ 86302

(928) 778-5208
FAX: (928) 445-1472
e-mail: John.Sears@azbar.org

December 2, 2009

Joe Butner
Yavapai Deputy County Attorney
Yavapai County Courthouse basket
Prescott, AZ

By e-mail and hand delivered

Re: State of Arizona v. Steven Carroll DeMocker/CR2008-1339

Dear Joe:

I am writing to again pick up the subject of possible changes in the conditions of confinement of Mr. DeMocker at the Yavapai County jail in Camp Verde. In view of the recent ruling regarding his release, it is critical that we address and resolve these issues immediately in order to protect his Sixth Amendment right to effective assistance of counsel in this case.

Specifically, we propose, as you and I have discussed on more than one occasion, that Mr. DeMocker be provided at our expense a laptop computer on which we have loaded all of the disclosure and defense-initiated materials in his case. The computer would, of course, not have wireless Internet access, but would be password-protected to insure confidentiality with respect to the sensitive and privileged materials it would contain. Mr. DeMocker would also require headphones to listen with some degree of privacy to all of the recorded interviews and other materials, using this laptop. It may well be that the laptop will have to include some sort of external storage device, given the incredible volume of materials that we believe he needs to have available to him to assist in the preparation of his defense in this case, but that is a matter that can easily be resolved once we get approval from YCSO for the use of this computer. Given the short time between now and trial, we propose that Mr. DeMocker be given access to this computer not less than eight (8) hours per day, seven (7) days per week. Even then, it is unlikely that he will have enough time to completely review all of the discovery and related materials in his case before the scheduled trial date in May 2010.

In order to accomplish this, I believe Mr. DeMocker will have to be provided with some private space within the jail that has a power outlet, given the impossibility of using batteries for the laptop for all of these hours. Additionally, we propose that Mr. DeMocker be given access to a private and secure telephone line to

JOHN M. SEARS
ATTORNEY AT LAW
CERTIFIED CRIMINAL LAW SPECIALIST

communicate with his defense team, including experts and consultants, for at least four (4) hours per day, Monday through Friday of each week. Currently, he is required to make his legal calls from a phone in his dorm, which he shares with more than thirty (30) other inmates, with absolutely no privacy on his end of the call. It would make sense, in our view, to have the telephone in the room where he is allowed access to the laptop, so that his conversations with his defense team can be more meaningful and productive. Perhaps a cell phone might be used here.

From time to time, Mr. DeMocker may also need to have access to printed materials and photographs, but the use of the laptop, and frequent up-dates to the data it contains, will go a long way toward reducing the amount of paper he would have to have with him in his cell.

Mr. DeMocker will also need to bring the laptop with him, so long as he remains in custody, each time he is brought to Prescott for court appearances, with appropriate security safeguards in place during those inmate moves.

I know there will be other details that will occur to both of us as we move through this process, but given the nature of this request, I ask that you let me know immediately if all of this is possible, and if so, I will take steps to make it happen on our end. If there are any problems or concerns with any of this, or if you would like to discuss this matter further, please call me upon receipt of this e-mail. This is something we need to have in place by the end of next week, and if YCSO is not willing to cooperate, please notify me right away so that I may take this matter to the judge without delay.

Thank you for your attention to these critical issues and requests. I will be out of the state from this Friday, December 4 until next Wednesday, December 9. I look forward to hearing from you after I have returned to Prescott on Wednesday, December 9, if not before.

Very truly yours,



John M. Sears

JMS:jas

xc: Larry Hammond by e-mail only
Anne M. Chapman by e-mail only
Rich Robertson, *R3 Investigations* by e-mail only
Mary Goody by e-mail only